

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RICHARD LIVINGSTON,  
Petitioner,

-against-

9:18-CV-803  
(BKS/DJS)

CHRISTOPHER MILLER,  
Respondent.

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**APPEARANCES:**

RICHARD LIVINGSTON  
Petitioner *Pro Se*  
14-B-3634  
Great Meadow Correctional Facility  
Box 51  
Comstock, New York 12821

**OF COUNSEL:**

HON. BARBARA D. UNDERWOOD  
Attorney General for the State of New York  
Attorney for Respondent  
28 Liberty Street  
New York, New York 10005

JODI A. DANZIG, ESQ.  
Assistant Attorney General

**DANIEL J. STEWART**  
**United States Magistrate Judge**

**ORDER**

Petitioner here is the Plaintiff in another action presently pending in this District, *Livingston v. Henderson*, 7:15-CV-631, which is assigned to Magistrate Judge Thérèse Wiley Dancks. Petitioner has filed a Motion to Consolidate this action with *Livingston v. Henderson*. Dkt. No. 9. He filed the same motion in the action pending before Magistrate

Judge Dancks. In a Decision and Order, dated October 31, 2018, Judge Dancks denied the motion. *Livingston v. Henderson*, 7:15-CV-631, Dkt. No. 128.

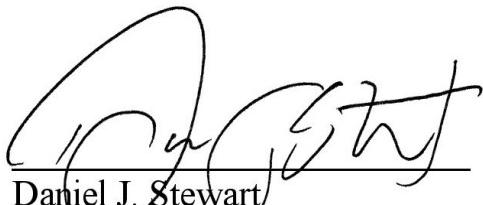
Under Federal Rule of Civil Procedure 42(a) when cases “involve a common question of law or fact” consolidation may be appropriate. Judge Dancks’ Decision and Order noted that, among other things, this action and *Livingston v. Henderson* do not share such common questions of law or fact nor are the parties the same in the two actions. *Livingston v. Henderson*, 7:15-CV-631, Dkt. No. 128 at pp. 2-3. For all the reasons given by Magistrate Judge Dancks, the Motion to Consolidate that was filed in this action should also be denied.

Accordingly, it is hereby

**ORDERED**, that Petitioner’s Motion to Consolidate (Dkt. No. 9) is **DENIED**, and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Decision and Order on the parties to this action.

Date: October 31, 2018  
Albany, New York

  
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Daniel J. Stewart  
U.S. Magistrate Judge